

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7287

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United States Court in Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-7363

UNITED BANK LIMITED,

Plaintiff-Appellant,

—against—

COSMIC INTERNATIONAL, INC.,

Defendant-Appellee.

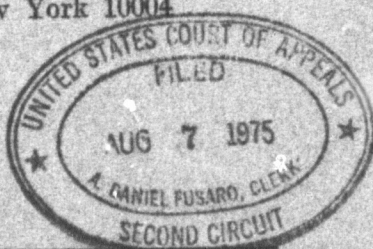
[One of consolidated appeals Nos. 75-7287, 75-7320,
75-7325 and 75-7363.]

APPEAL OF THE DISTRICT COURT'S JUDGMENT

**BRIEF OF DEFENDANT-APPELLEE
COSMIC INTERNATIONAL, INC.**

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APPEAL OF THE DISTRICT COURT'S JUDGMENT

BRIEF OF DEFENDANT-APPELLEE COSMIC INTERNATIONAL, INC.

ARGUMENT

I.

United Bank Limited is not entitled as a matter of law to interest on the proceeds of the trust receipts from the date payment became due under each trust receipt.

United Bank Limited contends that interest is mandated by New York CPLR Section 5001, notwithstanding its concession that "this case is in the nature of an interpleader action." It is Cosmic's contention that, even in the face

of a state statute apparently mandating prejudgment interest, federal district courts nevertheless retain their discretion in awarding interest in actions in the nature of interpleader. *Powers v. Metropolitan Life Ins. Co.*, 439 F.2d 605, 609 (D.C. Cir. 1971); *Prudential Ins. Co. of America v. Armwood*, 362 F. Supp. 1328, 1331 (E.D.N.Y. 1973).

“[O]rdinarily law or usage would justify the award of interest from the date of an unsatisfied demand by one entitled to the proceeds of an insurance policy * * * We believe that in interpleader actions interest need not be automatically allowed, but that its award should depend upon equitable considerations. . . .” *Powers v. Metropolitan Life Ins. Co.*, 439 F.2d at 609.

None of the cases cited by United Bank Limited in support of its argument is apposite, as none involves interpleader.

II.

Assuming that the District Court is bound, in an action in the nature of interpleader, to follow CPLR 5001, the express equity exception found in Section 5001(a) preserves judicial discretion in awarding interest in the case at bar.

New York CPLR Section 5001 provides, in pertinent part:

"(a) Actions in which recoverable. Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, *except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion.*" (Emphasis supplied.)

The weight of authority characterizes interpleader as an action of "equitable nature." *Liberty Oil Co. v. Condon National Bank*, 260 U.S. 235 (1922); *John Hancock Mutual Life Ins. Co. v. Doran*, 138 F. Supp. 47 (S.D.N.Y. 1956); *American-Hawaiian S.S. Co. v. Bowring & Co.*, 150 F. Supp. 449 (S.D.N.Y. 1957); 3A Moore's Federal Practice ¶¶ 22.02 [2], 22.03, at 3008-3013; *Clark v. Mosher*, 107 N.Y. 118, 14 N.E. 96 (1887); *American Motorists Inc. Co. v. Oakley*, 172 Misc. 319, 14 N.Y.S.2d 883 (Sup. Ct. 1939); *Grace v. Dry Dock Savings Bank*, 150 N.Y.S.2d 729 (Sup. Ct. 1955). As such, interpleader is clearly encompassed within the statutory language emphasized above; therefore, the District Court awards interest in actions in the nature of interpleader at its discretion.

CONCLUSION

United Bank Limited is not entitled as a matter of law to interest from the date payment became due under the trust receipts to the date suit was commenced, and the judgment appealed from should be affirmed.

Dated: New York, New York
August 6, 1975

Respectfully submitted,

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